

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 58 of 2000

IN

SPECIAL CIVIL APPLICATION No 7116 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

BAKOREBHAI BHIMSINH PADIGAR

Appearance:

MRS VASAVDATTA BHATT for Appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 29/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The challenge in this Letters Patent Appeal under

Clause 15 of the Letters Patent, is against the order of this court in Special Civil Application No. 7116 of 1999 dated 10.1.2000, whereby, the writ petition came to be dismissed, which was against the award of the Labour Court on a Reference of the employee which was partly allowed and the reinstatement was ordered with backwages of 70%.

2. We have heard the learned Advocate appearing for the appellant-Gujarat State Road Transport Corporation (GSRTC). It is a statutory Corporation set up under the Road Transport Corporation Act, 1950, whereas, the respondent was employed as a Conductor by the petitioner Corporation since last 22 years, who was, after departmental enquiry held against him, came to be dismissed by the competent authority from the service on 6.1.1995. The respondent workman raised industrial dispute, which came to be referred to the Labour Court. The respondent raised statement of claim and the petitioner Corporation replied the statement of claim and denied all the averments made in the claim. Upon hearing and considering the facts and circumstances, the Labour Court, by its award dated 15.5.1999, directed that the respondent should be reinstated by the appellant-GSRTC on its original post with continuity of service with all consequential benefits with 70% backwages, which was challenged before the learned Single Judge unsuccessfully. Hence this Letters Patent Appeal.

3. It has been noticed by us that the absence of the respondent-Conductor from attending the duty as a Conductor was 43 days on account of serious ailment of kidney. He remained absent without taking prior permission from the competent authority and on this allegation, enquiry was conducted which resulted into the dismissal of the workman from the Corporation, which came to be quashed and set aside by the Labour Court and confirmed by the learned Single Judge. However, instead of 100% backwages, it was restricted to 70%.

4. After having taken into account the fact-situation and the discussions and observations of the Labour Court and the learned Single Judge in the impugned orders, and the proved delinquency and its extent, we are of the opinion that there is no appropriate case made out nor spelt out, for interference, exercising powers under Clause 15 of the Letters Patent. It is evidently borne out that the absence was only on account of the kidney problem, for which the workman was undergoing treatment and thereafter, he was convalescent. Absence from service

for a spell of 43 days on the ground of serious ailment of kidney, is rightly held to be not sufficient delinquency or warranting extreme penalty of economic death of dismissal of the workman from service. Again, the backwages awarded by the Labour Court is restricted to 70%. Thus, there is indirectly punishment of 30% loss of wages. Considering the proportionality of punishment, the extent and type of the delinquency and that too in remaining absent from duty without prior intimation for a spell of 43 days from job, the impugned order, by no stretch of imagination, can be said to be excessive, in the light of discretionary power exercised by the Labour Court and confirmed by the learned Single Judge, which is justified in the facts and circumstances of the case.

5. Learned Advocate for the appellant-GSRTC, alternatively, has also submitted that reinstatement to the post of Conductor, in view of the disable, weak and unhealthy state of affairs of the workman, who has been doing the work of a Conductor, will not be possible and at the same time, in absence of any vacancy in the cadre of a Peon, a light work or assignment to the workman is also not possible. Needless to mention that a person who has served an organisation or an institution much less a public utility undertaking of the Government, is obliged to accommodate and adjust the disabled workman. It is for the administration to find appropriate and light assignment, since the work of Conductor which involves long standing and moving in running buses etc., will be out of consideration, in view of the physical condition of the workman. We hope and trust that the management of GSRTC will look into it and consider the case of the workman and will appropriately take a decision, so that the physical impairment sustained on account of the kidney problem by the conductor does not further aggravate the physical disability to the workman, which may deteriorate or affect adversely the administrative machinery of the GSRTC. In the event of any settlement in such an eventuality, it will be open for the management to consider the case of the workman and take appropriate decision.

6. With these observations, this LPA shall stand dismissed. Notice shall stand discharged. No order as to costs.

29.11.2000 [J N Bhatt, J.]

[D P Buch, J.]

msp

